

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Requests for Waiver and Review of Decisions of the Universal Service Administrator by)	
)	
Beth Rivka School)	File No. SLD-631977
Brooklyn, NY)	
)	
Buffalo City School District)	File No. SLD-628914
Buffalo, NY)	
)	
Chicago Public Schools)	File Nos. SLD-600949, 601096,
Chicago, IL)	601110, 601134,
)	622915
)	
Dale County School District)	File No. SLD-659474
Ozark, AL)	
)	
Edison School Consortium)	File No. SLD-632313
New York, NY)	
)	
Schools and Libraries Universal Service Support Mechanism)	CC Docket No. 02-6
)	

ORDER

Adopted: August 6, 2010

Released: August 6, 2010

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we deny five requests for review of decisions by the Universal Service Administrative Company (USAC) regarding the E-rate program (formally known as the schools and libraries universal service support mechanism).¹ USAC rejected petitioners' requests to make substantive changes to their FCC Form 471 applications several months after the funding window closed. We

¹ In this order, we use the term "appeals" to refer generally to requests for waiver and review of decisions issued by USAC. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c). *See* Request for Review by Chicago Public Schools, CC Docket Nos. 02-6, 96-45 (filed Apr. 15, 2009) (Chicago Request for Review); Request for Review by Buffalo City School District, CC Docket No. 02-6 (filed July 14, 2009) (Buffalo Request for Review); Request for Review and Waiver by Edison Schools Consortium, CC Docket No. 02-6 (filed Aug. 13, 2009) (Edison Request for Review); Letter from Robert Sniecinski, on behalf of Beth Rivka School, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Jun. 22, 2009) (Beth Rivka Request for Review); Letter from Donny Bynum, Superintendent, Dale County School District, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Aug. 10, 2009) (Dale Request for Review).

conclude that the requested changes are not permitted under E-rate program rules, and that the applicants did not demonstrate that a waiver of the Commission rules would be in the public interest. We therefore affirm USAC's decision.

II. BACKGROUND

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, internal connections, and basic maintenance of internal connections.² The annual funding cap for the E-rate program is \$2.25 billion.³ Under our rules, eligible schools and libraries may receive discounts ranging from 20 percent to 90 percent of the pre-discount price of eligible services, based on indicators of need.⁴ School districts may apply on behalf of multiple schools that will share a service, and calculate a single average discount for the group.⁵ E-rate funds are allocated according to rules of priority, with first priority given to requests for telecommunications services and Internet access services (priority 1 services).⁶ The remaining available funds are allocated to requests for support for internal connections and basic maintenance of internal connections (priority 2 services).⁷ E-rate funds for priority 2 services are allocated first to applicants whose applications are eligible for 90 percent discount levels, then to those eligible for 89 percent discount levels, and so on, until the available funds are exhausted.⁸ Funds generally are exhausted before requests for priority 2 services can be fully supported.⁹ In funding year 2008, E-rate funds were not provided for any priority 2 funding requests seeking discounts of 86 percent or less.¹⁰

² 47 C.F.R. §§ 54.501-54.503.

³ 47 C.F.R. § 54.507(a).

⁴ See 47 C.F.R. § 54.505(b). Applicants with higher percentages of students eligible for free or reduced-price lunch through the National School Lunch Program qualify for higher discounts for eligible services than applicants with low levels of eligibility for such programs. *Id.* Schools and libraries located in rural areas also generally receive greater discounts. *Id.*

⁵ See 47 C.F.R. § 54.505(b).

⁶ 47 C.F.R. § 54.507(g)(1)(i).

⁷ 47 C.F.R. § 54.507(g)(1)(ii).

⁸ 47 C.F.R. § 54.507(g)(1)(iii).

⁹ Since 1999, E-rate funds have been exhausted before satisfying all of the priority 2 funding requests submitted within the filing window. See USAC website, Automated Search of Commitments, <http://www.usac.org/sl/tools/commitments-search/Default.aspx> (last viewed Apr. 30, 2010); 47 C.F.R. § 54.507(c)

¹⁰ See, e.g., 47 C.F.R. § 54.507(g); Schools and Libraries News Brief (Feb. 27, 2009), <http://www.universalservice.org/sl/tools/news-briefs/preview.aspx?id=213> (last viewed Apr. 30, 2010) (announcing the granting of funding to priority 2 funding requests eligible for discounts of 88 percent or more and denials for requests eligible for discounts of 86 percent or less). In late November 2009 funding requests for 87 percent discounts were granted. See Schools and Libraries News Brief (Nov. 24, 2009), <http://www.universalservice.org/sl/tools/news-briefs/preview.aspx?id=268> (last viewed Apr. 30, 2010). Since funding year 2000, with one exception, priority 2 funding has been available only at the 80 percent discount level and above. See, e.g., Schools and Libraries News Brief (dated Apr. 11, 2008), available at <http://www.usac.org/sl/tools/news-briefs/preview.aspx?id=155> (last viewed Apr. 30, 2010) (setting the funding year 2007 denial threshold); Schools and Libraries News Brief (dated July 6, 2007), <http://www.usac.org/sl/tools/news-briefs/preview.aspx?id=98> (last viewed Apr. 30, 2010) (setting the funding year 2006 priority 2 threshold). In funding year 2003, priority 2 funding was available at the 70 percent discount level due to a \$420 million rollover of unused E-rate funds. See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third

3. Every year, the Commission announces a “filing window” and all applications filed within the window are treated as simultaneously received. USAC considers all applications filed within the window before addressing applications filed thereafter.

4. Applicants must file an FCC Form 470 to request discounted services.¹¹ After the FCC Form 470 is posted on USAC’s website for all potential competing service providers to review, the applicant must wait at least 28 days before entering into an agreement for services.¹² After entering into a contract for eligible services, the applicant must submit a complete FCC Form 471 application to USAC to request discounts on the eligible services to be provided.¹³ Applicants must file their FCC Form 471 applications within each funding year’s “filing window,” because program demand typically exhausts available funds before USAC has considered any applications filed after the close of the filing window. Upon successful receipt of the FCC Form 471 application and certification, USAC issues to both the applicant and the service provider an FCC Form 471 receipt acknowledgement letter (RAL) that contains, among other things, instructions for correcting certain clerical or ministerial errors in the submitted FCC Form 471 application, pursuant to the *Bishop Perry Order*.¹⁴ Within 20 days of the RAL, an applicant may make certain types of corrections to its FCC Form 471 application without submitting a new FCC Form 471.¹⁵ Under certain circumstances, applicants are also permitted to make more substantive changes to their applications: program rules outline specific procedures that applicants may follow to change service providers,¹⁶ change the services they have requested,¹⁷ or cancel a funding request or reduce the amount of a funding request after they have received a funding commitment.¹⁸

Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26935, para. 57 (2003) (*Third Report and Order*) (carrying forward unused funds that were projected to be unused in the first quarter of 2004 for use during the remainder of funding year 2003, *i.e.*, through June 30, 2004).

¹¹ 47 C.F.R. § 54.504(b).

¹² 47 C.F.R. § 54.504(b)(4).

¹³ 47 C.F.R. § 54.504(c); *see, e.g.*, Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (FCC Form 471).

¹⁴ *See* USAC website, Schools and Libraries Division, Form 471 Receipt Acknowledgement Letter, <http://www.usac.org/sl/applicants/step07/receipt-acknowledgement-letter.aspx> (last viewed Apr. 30, 2010) (RAL Procedures); *see also, e.g.*, USAC website, Schools and Libraries, Form 471 Receipt Acknowledgement Letter (Funding Year 2009: 07/01/2009 – 06/30/2010), http://www.usac.org/_res/documents/sl/pdf/SampleLetters/form-471RAL-applicant.pdf (last viewed Apr. 30, 2010). *See generally Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487170, *et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5326-27, paras. 23-24 (2006) (*Bishop Perry Order*) (granting waivers to petitioners due to certain clerical or ministerial errors in filing their FCC Forms 470 or FCC Forms 471 and associated certifications). In the *Bishop Perry Order*, the Commission directed USAC to provide applicants with 15 days to make these types of corrections. *Id.* at 5326, para. 23; *see also Request for Review of the Decision of the Universal Service Administrator by Archer Public Library, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-140961, *et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5318-21 (2006) (granting waivers permitting petitioners to correct clerical or ministerial errors in their FCC Forms 471 or associated item 21 attachments).

¹⁵ *See* RAL Procedures. The 20-day period is based on the 15 days from the date applicants are notified by USAC of mistakes to their FCC Forms 470 and 471 and the presumption that applicants will receive such notice approximately five days after the notice is postmarked by USAC. *See Bishop Perry Order*, 21 FCC Rcd at 5326, para. 23, n.63.

¹⁶ *See Request for Review by Copan Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File No. SLD-26231*, CC Docket Nos. 96-45, 97-21, Order, 15 FCC Rcd 5498 (2000) (*Copan Order*) (explaining that applicants may change their service provider when that change is allowed under its state and local procurement rules and under the terms of the contract

III. DISCUSSION

5. We deny requests for review from five applicants seeking to make substantive changes to their FCC Form 471 applications after the filing window closed. We conclude that none of the requested changes are permitted under E-rate program rules and that the applicants did not demonstrate that a waiver of the Commission rules would be in the public interest.¹⁹ Specifically, three petitioners – Chicago Public Schools (CPS), Buffalo City School District (Buffalo), and Edison Schools Consortium (Edison) – seek to modify their FCC Form 471 applications to raise their discount levels so that they would be eligible to receive priority 2 funding.²⁰ Additionally, two petitioners – Beth Rivka School (Beth Rivka) and Dale County School District (Dale) – seek to revise their FCC Form 471 applications to include additional services.²¹ We address these two groups of requests separately below.

1. Modifications to Increase Discount Level to Qualify for Priority 2 Funding

6. *CPS Request for Review.* In February 2008, CPS filed, on behalf of about 600 entities, five FCC Form 471 applications, each seeking an 86 percent E-rate discount for priority 2 services for FY 2008.²² In February 2009, CPS asked to revise those applications by removing certain schools in order to increase the applicable discount level to 88 percent.²³ In March 2009, USAC issued funding commitment decision letters (FCDLs) to CPS denying the five funding requests because they were below the funding

between the applicant and its original service provider, and the applicant has notified its original service provider of its intent to change service providers).

¹⁷ See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Red 26912, 26930, para. 43 (2003) (*Third Report and Order*) (codifying rules concerning changes applicants could make to the services they requested in their FCC Forms 471); 47 C.F.R. § 54.504(f)(1).

¹⁸ FCC Form 500 permits applicants to cancel a funding request or reduce the amount of their funding request after they have received a funding commitment. See http://www.universalservice.org/_res/documents/sl/pdf/500i.pdf. In addition, after adopting the rule only allowing priority 2 funding for an entity every two of five years, the Commission allowed applicants to cancel funding requests to adjust for the consequences of the rule. See March 2, 2007 Schools and Libraries News Brief, www.universalservice.org/sl/tools/news-briefs/preview.aspx?id=79 (last viewed Apr. 30, 2010).

¹⁹ The Commission may waive any provision of its rules on its own motion and for good cause shown. 47 C.F.R. § 1.3. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969). In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule. *Northeast Cellular*, 897 F.2d at 1166; *accord NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

²⁰ See Chicago Request for Review; Buffalo Request for Review; Edison Request for Review.

²¹ See Beth Rivka Request for Review; Dale Request for Review.

²² See FCC Form 471, Chicago Public Schools (filed Feb. 4, 2008) (SLD-600949) (CPS Application Number 600949); FCC Form 471, Chicago Public Schools (filed Feb. 4, 2008) (SLD-601096); FCC Form 471, Chicago Public Schools (filed Feb. 4, 2008) (SLD-601110); FCC Form 471, Chicago Public Schools (filed Feb. 6, 2008) (SLD-601134); FCC Form 471, Chicago Public Schools (filed Feb. 4, 2008) (SLD-622915) (totaling a pre-discount amount of \$17,292,362).

²³ See Chicago Request for Review at 4-5; *supra* para. 2.

thresholds for priority 2 services.²⁴ USAC stated that it did not process CPS's request to modify the application because it did not receive the request within the required 20-day timeframe for submitting clerical and ministerial corrections adopted in the Commission's *Bishop Perry Order*.²⁵ Thus, USAC treated CPS's funding requests as eligible for only an 86 percent discount, and, given program demand for FY 2008, rejected all priority 2 funding requests for discounts of 86 percent or less.²⁶

7. In its request for review, CPS states that its request to modify its FCC Form 471 applications was not a request to correct a ministerial or clerical error but rather was a "corrective action" submitted during the program integrity assurance (PIA) and selective review processes and prior to the issuance of the FCDLs.²⁷ CPS explains that its request to modify its FY 2008 FCC Form 471 applications arose from its discovery in early 2009 that priority 2 funding requests at the 86 percent discount level would likely not be funded.²⁸ CPS states that the modification request was intended to enable needier schools to obtain support.²⁹ CPS asserts that USAC and the Commission have previously allowed schools to take "corrective actions" during the application review process when those changes were made prior to the issuance of FCDLs.³⁰ To support its position, CPS argues that the Commission has permitted other applicants to cancel or reduce funding requests during the PIA and selective review processes.³¹ CPS therefore requests that the Commission permit CPS to modify its FY 2008 FCC Form 471 applications at issue and remand the affected applications to USAC for funding based on the revised 88 percent discount level.³²

²⁴ See Letter from USAC, Schools and Libraries Division, to Barton Taylor, Chicago Public Schools (dated Mar. 17, 2009) (SLD-600949); Letter from USAC, Schools and Libraries Division, to Barton Taylor, Chicago Public Schools (dated Mar. 17, 2009) (SLD-601096); Letter from USAC, Schools and Libraries Division, to Barton Taylor, Chicago Public Schools (dated Mar. 17, 2009) (SLD-601110); Letter from USAC, Schools and Libraries Division, to Barton Taylor, Chicago Public Schools (dated Mar. 17, 2009) (SLD-601134); Letter from USAC, Schools and Libraries Division, to Barton Taylor, Chicago Public Schools (dated Mar. 17, 2009) (SLD-622915).

²⁵ See, e.g., CPS Application Number 600949 at 3; *Bishop Perry Order*, 21 FCC Rcd at 5326, para. 23; see *supra* para. 3.

²⁶ See, e.g., CPS Application Number 600949 at 4.

²⁷ Chicago Request for Review at 2-4. USAC performs PIA reviews to verify that the discounts recipients seek are for eligible services, provided to eligible entities, and for eligible uses. See USAC website, Schools and Libraries, Program Integrity Assurance, www.sl.universalservice.org/reference/6pia.asp (last viewed Apr. 30, 2010). USAC performs selective reviews to verify that applicants have secured access to all of the resources necessary to make effective use of the products and services for which they receive discounts. See USAC website, Schools and Libraries, Undergo Selective Review, www.universalservice.org/sl/applicants/step08/undergo-selective-review/default.aspx (last viewed Apr. 30, 2010).

²⁸ Chicago Request for Review at 4.

²⁹ *Id.* at 4-5.

³⁰ *Id.* at 5-7.

³¹ *Id.* (citing *Requests for Review of Decisions of the Universal Service Administrator by Joseph Jingoli & Sons, Inc., et al.*, Order, File No. SLD-475364 et al, CC Docket No. 02-6, Order, 22 FCC Rcd 19227, 19227-28, paras. 2-4 (Wireline Comp. Bur. 2007) (*Jingoli Order*) (observing three ways that applicants could reduce their funding requests, including during the PIA process); *Request for Review of Decision of the Universal Service Administrator by Oklahoma City Public Schools*, File No. SLD-262187, CC Docket Nos. 96-45, 97-21, Order, 17 FCC Rcd 23501, 23502, para. 3 (Wireline Comp. Bur. 2002) (*Oklahoma City Order*) (permitting applicants to reduce the amount of their funding requests during the two weeks following receipt of their RAL)).

³² Chicago Request for Review at 9. CPS also asserts that USAC's failure to issue decisions on its funding requests until nine months into funding year 2008 caused a financial predicament for CPS and its vendors, as well as a delay of services critical to the continued operation of existing facilities within the school district. *Id.* at 7-8.

8. *Buffalo Request for Review.* In February 2008, Buffalo filed an FCC Form 471 application seeking an 86 percent discount on both priority 1 and priority 2 services for FY 2008.³³ In December 2008, USAC initiated a PIA review of Buffalo's application. Buffalo states that, in the course of preparing its response to PIA questions, it discovered that it had unintentionally omitted 10 non-instructional facilities (NIFs) as well as data concerning the percentage of students eligible for free or reduced lunches at 11 other locations that had originally been listed on its application.³⁴ Buffalo contends that, because most of its NIFs were not eligible for priority 2 services, it asked USAC to shift some of the entities into a separate, new, segregated list of entities that were not seeking priority 2 services.³⁵ Additionally, Buffalo sought to remove two entities, thereby raising the average discount level for the remaining entities from 86 to 88 percent and enabling them to qualify to receive priority 2 support in FY 2008.³⁶ In April 2009, USAC issued an FCDL to Buffalo denying funding for the two individual funding requests at issue.³⁷ USAC stated that Buffalo's request to remove locations from its FCC Form 471 application could not be processed because it was received after the 20-day timeframe for receiving clerical and ministerial corrections.³⁸ Thus, USAC treated Buffalo's funding requests as eligible for only an 86 percent discount, leaving it below the level for which priority 2 funding was available for FY 2008.³⁹

9. In its request for review, Buffalo states that it did not act "to circumvent any E-rate program rules, but felt that creating the new worksheet with two (2) fewer eligible entities ... would allow the district to obtain [b]asic [m]aintenance services for its neediest schools."⁴⁰ Buffalo asserts that USAC has always allowed schools to make changes to their applications during the PIA process.⁴¹ Moreover, it explains that its requested change did not seek any increased funding or services beyond the original amount sought as part of its original FCC Form 471 application.⁴² Thus, Buffalo contends that USAC's rationale for rejecting its requested change – that it was beyond the allowable 20-day timeframe – is erroneous.⁴³

10. *Edison Request for Review.* In February 2008, Edison filed an FCC Form 471 application, which included two funding requests seeking 86 and 87 percent discounts on priority 2 services for FY 2008.⁴⁴ In March 2008, USAC initiated a PIA review of Edison's FCC Form 471 application.⁴⁵ In February 2009, before USAC's PIA review was completed, Edison submitted a request to USAC, asking

³³ See FCC Form 471, Buffalo City School District (filed Jan. 31, 2008) (SLD-628914).

³⁴ See Buffalo Request for Review at 4.

³⁵ *Id.* at 5.

³⁶ *Id.* (referencing Funding Request Numbers (FRNs) 1735675, 1735678).

³⁷ See Letter from USAC, Schools and Libraries Division, to Sanjay Gilani, Buffalo City School District, at 4, 7 (dated April 7, 2009) (Buffalo FCDL) (Application Number 628914, FRNs 1735675 and 1735678).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Buffalo Request for Review at 5.

⁴¹ *Id.* at 6.

⁴² *Id.*

⁴³ *Id.* at 7-10.

⁴⁴ See FCC Form 471, Edison School Consortium (filed Feb. 7, 2008) (application number 632313, FRNs 1747102 and 1747104).

⁴⁵ See Edison Request for Review at 1-2.

USAC to remove a few locations from each of its two funding requests, resulting in a rise of the discount rates for those two funding requests to 89 and 90 percent, respectively.⁴⁶ In April 2009, USAC issued an FCDL to Edison denying these two funding requests in their entirety and subsequently affirmed its denial in response to Edison's appeal.⁴⁷ USAC indicated that Edison's request to revise its funding request was not received within the required 20-day timeframe for receiving clerical and ministerial corrections.⁴⁸ Thus, USAC indicated that the discount levels for Edison's funding requests were below the priority 2 funding threshold.⁴⁹

11. In its August 2009 request for review, Edison states that, because the PIA process had already begun when it requested the removal of entities from its applications, its submission was in accordance with USAC guidance.⁵⁰ It also asserts that not only is there confusion about whether USAC has a 15-day or 20-day deadline for RAL corrections, but that USAC acknowledges that it can continue to accept and make RAL-type corrections after the deadline has passed.⁵¹

12. Discussion. Based on the facts and circumstances of these cases, we affirm the decisions by USAC denying the requests by CPS, Buffalo, and Edison to allow them to modify their FY 2008 FCC Form 471 applications. We also decline to waive the Commission's rules to permit such modifications.⁵² Specifically, we decline to grant these petitioners the opportunity to remove certain schools from their applications so that the remaining schools will qualify for discount rates of at least 88 percent, making them eligible for priority 2 funding under the E-rate program for FY 2008.⁵³ We recognize petitioners' desire to avoid denial of their funding requests, which include entities that would otherwise be eligible for the highest discounts on priority 2 services for FY 2008. However, as further explained below, we find that such modifications are outside the scope of the types of changes allowable pursuant to the Commission's rules and that to waive the Commission's rules to permit them would be detrimental to the E-rate program and would not serve the public interest.⁵⁴

13. Consistent with the Commission's direction in the *Bishop Perry Order*, applicants are provided with an opportunity to revise their applications in order to correct ministerial or clerical errors.⁵⁵ Yet none of these applicants were seeking to correct ministerial or clerical errors. CPS acknowledges that

⁴⁶ *Id.* at Exhibit D.

⁴⁷ See Letter from USAC, Schools and Libraries Division, to Lauren Heagerty, Edison School Consortium at 5, 6 (dated April 7, 2009) (Edison FCDL); Letter from USAC, Schools and Libraries Division, to Lauren Heagerty, Edison School Consortium (dated June 1, 2009) (Administrator's Decision on Appeal of SLD-632313, FRNs 1747102, 1747104).

⁴⁸ See Edison FCDL at 5, 6.

⁴⁹ *Id.*

⁵⁰ Edison Request for Review at 2-3.

⁵¹ *Id.* at 3.

⁵² See *supra* n.19.

⁵³ See *supra* n. 10.

⁵⁴ See *Bishop Perry Order*, 22 FCC Rcd at 5321, para. 11.

⁵⁵ See *id.* at 5321-22, para. 12; see also *Request for Review of Decision of the Universal Service Administrator by Academy for Academic Excellence, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-539076, 539722, et al, CC Docket No. 02-6, Order 22 FCC Rcd 4747, 4748-49, para. 5 (Wireline Comp. Bur. 2007); *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Acorn Public Library District, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-637819, et al., CC Docket No. 02-6, Order, 23 FCC Rcd 15474, at 15476-77, para 5 (Wireline Comp. Bur., 2008).

it sought to modify its FCC Form 471 solely to increase its discount level based on its discovery that its 86 percent discount level funding requests would likely not be funded.⁵⁶ Buffalo similarly admits that it sought to modify its application to allow the district to obtain basic maintenance services for its neediest schools.⁵⁷ Although Edison makes no similar admission, we infer from the date it sought its modification (February 26, 2009 for the funding year that began on July 1, 2008), the schools that it sought to remove from its funding requests, and the discount rates applicable to those funding requests, that it too was seeking to raise its discount rate above the FY 2008 threshold so that its requests would be funded.⁵⁸

14. Allowing applicants to modify their FCC Form 471 applications to increase their discount level in the middle of the funding year in order to be eligible for priority 2 funding would have significant adverse consequences for the E-rate program by creating an incentive for applicants to manipulate the normal application process. Indeed, every consortium would have an incentive to remove (or add) entities in order to qualify for funding after learning what the priority 2 funding threshold for a given fiscal year will be. But USAC relies on the information in the Form 471s in order to *set* the priority 2 funding threshold. Allowing these kinds of changes would, at a minimum, require USAC to reset the priority 2 funding level after accounting for such late-filed changes. It would also be unfair to applicants who received commitments earlier in the year, before the threshold for priority 2 was established, as they would not be able to readjust their funding requests. Permitting applicants to delete (or add) entities to increase the applicants' discount level could create substantial additional administrative costs for USAC and for applicants, and cause a delay in granting priority 2 funding requests or even require a reduction in funding requests that were already committed. We find that allowing these changes would harm the fund's integrity and increase administrative burdens and costs, and therefore is not in the public interest.

15. We reject petitioners' claims that the Commission has previously permitted applicants to change their applications in analogous situations. CPS cites to the *Oklahoma City Order*, in which the Bureau noted that applicants can make certain, limited changes to their applications during the two weeks after they have received their RAL.⁵⁹ Unlike that order, all the changes requested in these requests for review came months after the applicants received their relevant RALs. Petitioners also rely on the *Jingoli Order*, which listed three ways that an applicant could cancel or reduce the amount of a funding request.⁶⁰ Although the applicants here are removing schools from their request, which may have the effect of reducing the amount of total funding they are seeking, neither the Commission nor USAC have ever knowingly allowed applicants to delete locations from their applications months after submission for the

⁵⁶ Chicago Request for Review at 2-4.

⁵⁷ Buffalo Request for Review at 5.

⁵⁸ Edison's FRNs 1014912 and 1014915 qualified for discounts of 86% and 77%, respectively, prior to its Feb. 26, 2009 request to remove seven entities from those FRNs. It states that after removing those entities, those FRNs qualified for discounts of 89% and 90%, respectively. Although Edison does not offer a reason for removing these entities at this late date, we note that on the next day, Feb. 27, 2009, USAC announced that it would deny funding to priority 2 funding requests eligible for discounts of 86% or less, and grant funding requests eligible for discounts of 88% or more. *See supra* n. 10.

⁵⁹ *Oklahoma City Order*, 17 FCC Rcd at 23502, para. 3 ("Corrections that are permitted at this time include changing contact information, reducing the amount of requests included in an application, changing the service provider identification number if the original service provider has merged with or been acquired by the new service provider, and 'unbundling' or 'splitting' a funding request that incorrectly combined two requests."). In the *Oklahoma City Order*, the Bureau did not allow Oklahoma City to revise its application to fix a clerical error that would have increased the support requested. *Id.* at 23501, para. 1.

⁶⁰ *Requests for Review of Decisions of the Universal Service Administrator by Joseph Jingoli & Sons, Inc., et al*, Order, File No. SLD-475364 et al, CC Docket No. 02-6, Order, 22 FCC Rcd 19227, 19227-28, paras. 2-4 (Wireline Comp. Bur. 2007) (*Jingoli Order*) (recognizing three ways that an applicant may voluntarily cancel or reduce the amount of a funding request: (1) correct the RAL that USAC sends to them; (2) during PIA review, officially inform a PIA reviewer; or (3) submit an FCC Form 500 if they have already received a funding commitment).

purpose of raising their discount rates so as to qualify for priority 2 funding for a particular funding year. We therefore reject the assertions by CPS, Buffalo, and Edison that applicants previously have been permitted to substantially change their applications to raise the discount level for which they are eligible.⁶¹

16. Applicants have the option, at the outset, to apply for E-rate support individually or as a group. Entities applying as a group will qualify for a single, averaged discount rate.⁶² Because petitioners' funding requests fell below USAC's priority 2 funding threshold for FY 2008, we find that their funding requests were properly denied.⁶³ Accordingly, we affirm USAC's decision and deny CPS's, Buffalo's, and Edison's requests for review.

2. Modifications to Include Additional Services

17. *Beth Rivka Request for Review.* In February 2008, Beth Rivka filed two applications for FY 2008 E-rate support.⁶⁴ In October 2008, USAC granted one application, which included four funding requests for telecommunications services, totaling approximately \$25,789 in discounts.⁶⁵ In November 2008, eight months after filing but before USAC had issued a decision about Beth Rivka's other FCC Form 471 application, which included 25 funding requests for internal connections and basic maintenance services, Beth Rivka sought to add two more funding requests to that second application, seeking approximately \$43,300 in additional support for telecommunications services.⁶⁶ In March 2009, USAC issued an FCDL for Beth Rivka's FCC Form 471 application number 631977, granting funding for only the 25 original priority 2 funding requests.⁶⁷ In April 2009, Beth Rivka appealed this decision.⁶⁸ In its decision on appeal, USAC stated that the E-rate rules do not allow an applicant to supplement its FCC Form 471 application with additional funding requests after that application has been committed for funding.⁶⁹

18. In its request for review, Beth Rivka challenges USAC's decision.⁷⁰ Beth Rivka states that USAC did not commit funding for the second FCC Form 471 application number 631977 until four months after Beth Rivka requested the addition.⁷¹ Therefore, Beth Rivka contends that USAC should not

⁶¹ See, e.g., *supra* nn. 31, 41 & 51.

⁶² See 47 C.F.R. § 54.505(b).

⁶³ *Id.*

⁶⁴ FCC Form 471, Beth Rivka School (filed Feb. 7, 2008) (application number 631912); FCC Form 471, Beth Rivka School (filed Feb. 7, 2008) (application number 631977).

⁶⁵ Letter from USAC, Schools and Libraries Division, to Rabbi Lezell, Beth Rivka School (dated Oct. 14, 2008) (FCDL granting application number 631912).

⁶⁶ Letter from Beth Rivka School to USAC, Schools and Libraries Division (dated Apr. 28, 2009) (concerning application number 631977).

⁶⁷ Letter from USAC, Schools and Libraries Division, to Rabbi Lezell, Beth Rivka School (dated Mar. 24, 2009) (FCDL for application number 631977).

⁶⁸ See Letter from Robert Sniecinski, on behalf of Beth Rivka School, to USAC, Schools and Libraries Division (dated Apr. 28, 2009).

⁶⁹ Letter from USAC, Schools and Libraries Division, to Robert Sniecinski, on behalf of Beth Rivka School at 1 (dated May 8, 2009).

⁷⁰ Beth Rivka Request for Review.

⁷¹ *Id.*

have rejected its request for being filed after funds were committed.⁷² Beth Rivka also contends that the *Bishop Perry Order* allows it to correct such an omission during the review process.⁷³ In addition, Beth Rivka notes that new funding requests are often added during the PIA review process when existing funding requests that include a mixture of priority 1 and 2 services are split or when an amount in dispute in a funding request is split off into a new funding request.⁷⁴ Beth Rivka specifically references a case where the Commission permitted Mineola to submit a page that it had omitted from its attachment.⁷⁵

19. *Dale Request for Review.* In January 2009, Dale filed an FCC Form 471 application seeking a total of \$495 in support for Internet access.⁷⁶ In late January 2009, USAC sent Dale a RAL requesting any changes to its FCC Form 471 application by February 18, 2009.⁷⁷ Dale asserts that it later realized that it needed additional Internet service.⁷⁸ In June 2009, it contracted for an additional \$245 per month in additional Internet service, and on July 6, 2009, Dale sought to revise its FCC Form 471 application to include this additional service.⁷⁹ On July 16, 2009, USAC rejected Dale's modification as untimely.⁸⁰ In its request for review, Dale requests the Commission to direct USAC to grant Dale discounts on the additional services.⁸¹

20. Discussion. We deny Beth Rivka's and Dale's requests for review. Neither seeks to correct a simple ministerial or clerical error; rather both seek to supplement their funding requests based on demand they recognized after filing those requests. Even if USAC erred in stating that Beth Rivka's requests for additional support were made after it had committed funds, the substance of USAC's decision was correct. Permitting applicants to make continuing corrections to their applications would seriously undermine the deadline, because applicants would be able to file timely Form 471s as mere placeholders while they decided what services they might like and then "correct" their applications to add such services after the deadline. In both of these cases, the applicants sought, at least four months after their initial applications, to make substantive changes in order to increase their support. Permitting such changes would not be in the public interest and would undermine program integrity.

21. Moreover, in the Mineola case, referenced by Beth Rivka, the services omitted by Mineola were omitted solely due to a clerical error.⁸² In that case, the figures in the application that Mineola

⁷² *Id.*

⁷³ *Id.* at 2.

⁷⁴ *Id.* at 2, 6; Letter to Mel Blackwell, Universal Service Administrative Company, from Dana Shaffer, Wireline Competition Bureau, Mineola Union Free School District, SLD-637705, 23 FCC Rcd 6431 (Wireline Comp. Bur. 2008) (*Mineola Letter*).

⁷⁵ *Id.*

⁷⁶ See FCC Form 471, Dale County School District (filed Jan. 14, 2009) (SLD-659474); Letter from USAC, Schools and Libraries Division, to Julie Gill, Dale County School District (dated June 30, 2009) (Dale FCDL).

⁷⁷ See Dale Request for Review.

⁷⁸ *Id.*

⁷⁹ Letter from Donny Bynum, Superintendent, Dale County School District, to USAC, Schools and Libraries Division (dated July 6, 2009).

⁸⁰ Letter from USAC, Schools and Libraries Division, to Donny Bynum, Dale County Board of Education (dated July 16, 2009).

⁸¹ See Dale Request for Review.

⁸² *Mineola Letter* at 1.

submitted did not match the total for the one-page attachment Mineola provided.⁸³ Moreover, that attachment indicated that it was page one of three pages.⁸⁴ Thus, the evidence indicated that Mineola had prepared three pages of attachments totaling the amount indicating *before* the funding window deadline. Permitting Mineola to provide those omitted pages merely allowed Mineola to correct a clerical error. Unlike Mineola, neither Beth Rivka nor Dale claims that the services that they sought to add to their applications were omitted from their initial applications due to a data entry error. Rather both appear to have sought to make substantive changes to their applications, months after their original FCC Form 471 filings. In such cases, applicants must file new FCC Form 471 applications for support. Accordingly, we deny their appeals.

IV. ORDERING CLAUSES

22. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the requests for review filed by Beth Rivka School, Buffalo City School District, Chicago Public Schools, Dale County School District, and Edison School Consortium ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett
Chief
Wireline Competition Bureau

⁸³ *Id.*

⁸⁴ *Id.*